

CLAIM OF YAEMON MATSUMOTO

[No. 146-35-2477. Decided May 15, 1951]

FINDINGS OF FACT

1. This claim, in the amount of \$577.20, was received by the Attorney General on April 14, 1949. It involved six different kinds of personal property loss, namely, loss through forced sale of personal property, damage of clothing and wearing apparel in storage, the loss of phonograph records which were destroyed by the claimant, money paid for a premium on fire insurance on property stored, moving and shipping costs, and a claim for reimbursement of money paid for the purchase of various items in preparation for evacuation. Claimant is a married man living with his spouse, Tsuta Matsumoto, and all the property involved was owned by and all the expenditures made were in behalf of the community estate. Both claimant and his wife were born in Japan of Japanese parents and neither has at any time since December 7, 1941, returned to Japan. On December 7, 1941, and for some time prior thereto, claimant and his wife actually resided at 1155 South Grand Avenue, Pasadena, California, and were residing at that address when they were evacuated on May 14, 1942, under military orders pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to the Tulare Assembly Center, Tulare, California, and from there to the Gila River Relocation Center, Rivers, Arizona.

2. At the time claimant was evacuated, he had to dispose of his automobile, camera and equipment, trunk, furniture, and dishes, which are involved in the claim. Because of the limited space made available for storage of his property, he sold a portion of his personal property

to various persons during the period of about three weeks before his evacuation and acted reasonably in doing so when no free market was available to him. He obtained thereby \$245 for property having then a fair market value of \$521.50, inclusive of a camera and equipment worth \$176.50, for which he received on sale \$50.

3. A short time before his evacuation, claimant was allotted a small amount of space in the Japanese Union Church at 305 Kensington Place, Pasadena, in which to store personal property. Claimant stored there clothing and wearing apparel which, upon his return from the relocation center, were no longer in a usable condition because they had been badly damaged by moths and mold. The total value of this property at the time claimant was evacuated was \$66.80.

4. To protect against any loss by fire to property stored, claimant purchased a fire insurance policy on this property for a period of one year and paid the premium of \$7. In view of the circumstances, claimant's action in insuring his property stored was reasonable.

5. Claimant also incurred moving and shipping costs in the amount of \$15. This expense included payments made for moving his property to the Japanese Union Church, a payment to a Reverend Herbert Nicholson for bringing some of his property to him at the relocation center, and the reimbursement of his former employer who had shipped certain articles to him at the relocation center.

6. Prior to his evacuation, claimant had in his possession approximately 15 Japanese records having a total value of \$3. The claimant destroyed them because he was fearful of being punished for having them in his possession.

7. Claimant also incurred expenses in the total amount of \$17.70 in the purchase of various things in preparation for evacuation.

8. The fair market value of claimant's property sold, exclusive of the camera and equipment, was \$345 which

less the \$195 received on sale results in a loss of \$150. This together with the loss of \$66.80 on property stored and ruined, \$15 spent for moving property to a place of storage and cost of shipment to the Relocation Center of other goods, and \$7 for the fire insurance premium results in an aggregate loss of \$238.80, none of which has been compensated for by insurance or otherwise.

REASONS FOR DECISION

Claimant was eligible to claim. This claim includes all interest of the marital community in the subject property since the wife also is eligible to claim but has made no claim, and the husband having the power of management and control of such property under California law may claim for the whole. *Tokutaro Hata, ante*, p. 21.

On the facts found in paragraph 2, the loss on sale of claimant's property, exclusive of the camera and equipment, is allowable. *Toshi Shimomaye, ante*, p. 1. The Attorney General's Regulations of February 5, 1942 (7 F. R. 844, § 30.10), prohibited the use, operation, or possession by any enemy alien of "any camera except as hereinafter provided," the exceptions providing for possession only of fixed cameras not readily transportable, and then only after written report to the police authorities and upon written authority from the United States Attorney. The enemy alien was required to make written application, in which he was to state *inter alia*, "The specific equipment, or * * * the specific classes of equipment, with respect to which he desires to obtain permission * * *." The use of the single word "cameras," as the caption of the section might, but for the language just quoted, suggest that only the camera itself was hit by the Regulations and not also its equipment, such as lenses and stands and the equipment for photographic development. But the elaboration of Subsection (a) contained in Subsection (c), quoted in part, *supra*, forecloses this possibility. The Regulations extended to all the means of photography which were accessory to the

camera itself. Claimant apparently so thought for he obtained no authority to retain these things but sold them, which were then worth \$176.50, for \$50. The resulting loss did not arise out of his evacuation but from the force of the Regulations, as he himself admitted (Tr., p. 2), and is not allowable. Cf. *Haruto Tomita, ante*, p. 172.

Since the record on one point, however, is not altogether clear and since claimant may be able to present further evidence on it, the claimant is given 30 days within which to request a remand to the field for that purpose, but in the absence of such a request, the award hereinafter made shall be final. The facts are stated thus by claimant in his Affidavit (pp. 5-6):

Among the items of equipment which I had in my possession were two cameras. Since cameras were considered contraband and were to be turned in to the police, I took my 5 x 7 portrait camera, a small candid camera and a flashlight to the police department. The police told me that they had no room for the 5 x 7 camera with the equipment, as it was too large and refused to take it although the other items were kept in their custody. Since I had already taken my allotted space in the Union Church, I was at a loss as to what to do with the portrait camera when I was evacuated. A friend of ours, Mrs. Stella A. Thomas, of 352 North Garfield Avenue, Pasadena, California, offered to keep the camera for me. After she had the camera a few weeks, I thought that since we did not know when we would return to California or where we were being sent that perhaps I should sell the camera and equipment, and I asked Mrs. Thomas to find a buyer. This she did, and the camera was sold with equipment for \$50 to a person unknown to me.

On remand to the field a conference was held with the claimant at which he reaffirmed that fact that he "took two cameras to this police station. The smaller one they

took, but the larger one they refused" (Tr., p. 1); that "the only reason they gave me for refusing to take the large camera was that it was not necessary for me to turn it in. I don't believe there were any other reasons"; that he recalled nothing being said about written permission from the United States Attorney to keep possession of the camera being necessary; that he thereafter took the other camera home and "about a week or so later * * * I took the camera to Miss Thomas to see if she could sell it for me"; that his employer told him he could leave the camera with him if claimant wanted to; and that the sale was made "at least two weeks or a month before we were evacuated." (Tr., p. 2.) Nothing appears of record to indicate that the claimant applied for or obtained permission to retain the camera and nothing to corroborate claimant's allegations of his attempt to deposit the camera.

In the circumstances, it is not material what was claimant's motive in selling the camera, but he is entitled to explain more fully, if he can, the alleged refusal of the police authorities to take custody of it and his consequent continued possession and ultimate sale of it without lawful authority.

On the facts found in paragraph 3, the loss is allowable. *Ernest K. Iwasaki, ante*, p. 156.

On the facts found in paragraph 4, the loss is allowable. The claimant's fire insurance policy taken out to protect his interest in the property stored in the Japanese Union Church and the premium paid for a period of only 1 year on the policy "partakes itself of the nature of a loss incurred to prevent a greater loss," *Frank Kiyoshi Oshima, ante*, p. 24, and is, therefore, allowable. Cf. *Suetatsu Hatamoto, ante*, p. 141.

The record is not clear on what proportion of the \$15 was spent on removing claimant's property to storage in the Union Church and what on shipment of other property

to the Relocation Center. The money spent on drayage to a place of storage, appearing in all the circumstances reasonable, is allowable; and that spent in shipment of certain property to the Relocation Center, being also reasonable as a means of preservation, is allowable; but this does not apply to the \$7 paid the Reverend Herbert Nicholson for carrying certain other property to the Relocation Center from the place of storage in the Union Church. That is not allowable. *Ernest K. Iwasaki, supra*. That case is distinguishable on its facts from the situation otherwise presented here for there a refrigerator was taken out of storage and shipped to the Relocation Center solely for claimant's convenience, in 1944, whereas here the property had never been in storage and was sent to the Relocation Center for its preservation. Claimant was about to board the train for the Relocation Center with folding chairs, a wash tub, and card table but was prevented from taking the property with him by the military police (Affidavit, p. 7). The wife of his employer had accompanied him to the train and seeing what happened at the station sent the goods on to him. Although convenience may have been a motive, preservation must have been a motive also and as such must be recognized as determinative. The converse is true of the belongings brought to the Relocation Center by the Reverend Herbert Nicholson for they were brought from storage. The doctrine of *Oshima's case, supra*, in no way conflicts with that of *Mary Sogawa, ante*, p. 126, for the reason that the former case looks only to the cost of preservation of property and not to any costs merely connected in some way with evacuation for the payment of which no legislative sanction exists.

On the facts found in paragraph 6, the loss is not allowable. *George Tsuda, ante*, p. 90.

On the facts found in paragraph 7, the loss is not allowable. *Mary Sogawa, supra*.